O/Cotton Textile Contl
Ord

1953 **File No. 15/53**

PILE

Legal Dyptt.

K. **G.** BRANCH

Subject:-

Opinion on the Cotton Textile Control Order 1948

O/C.T.C.O/53

File No. 15/53

Gen. 194 e.

C O N T E N T S.

Legal Department File No. C. C.T.C.O./55(C-15)

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Office of the R.L.A.

Submitted.

Please see the office note of the S.T.O. at pp. 3-A-ante.

The Dy. S...O., Ahmedabad in his letter dt the 11th December 1952 addressed to the S.T.O. Bombay has reported as follows:-

10 bales of cloth were purchased by Govt. from the Gujarat Cotton Mills., Company Ltd., against the T.O's Release order dated 13-7-1952 issued under clause 30(2) of the Cotton Textiles (Control) Order, 1948. Payment for these bales was made to the Mills on 31-7-1952. At the time of taking delivery on 19-8-1952, it was found that four bales out of the ten bales were damaged by rain water. The Mills were therefore requested by they Dy. S.T.O., A'bad under thier letter No.71)/ LIIA/2516, dt. 28-8-52 to open and repack the same with the contents duly verified by their Inspector. The Regional Director of Production, A'bad was also requested by the Dy. S.T.O. A'bad to allow the mills to open and repack those bales. As no reply was received from the mills despite several reminders, the Regional Director of Production was requested by the Dy. S.T.O's office A'bad under their letter No. (71) LIIAp2516, dt. 6-10-1952 to expedite the permission for which mills had also requested him on 11-9-1952. The Regional Director of Production, A'bad informed the Dy. S.T.O's office under his letter NoCX2-(29) Par/29 dt.11.10.1952 that he had already given permission to the mills to open and repack them and also stated that the mills were agreeable to refund the value of those bales. As the mills had failed to give delivery of the bales in time and the contents were reported to have been dam-

rain water, the Dy. S.T.C's office considered it advisable to accept the refund of the value of the bales. The mills were therefore requested by the Dy, S.T.C's office. On 4-11-1952 to arrange for the regund of the amount. Despite several reminders and personal visits of Textile Inspectors to the mills, the mills have not so far arranged for the refund of the amount. The mills have since stopped working and it is not known when they would be restarting. Attempts made by them to contact responsible persons have also not materialised. The Dy. S.T.C's office, A'bad has therefore requested the S.T.C's office, Bombay to advise as to what steps should be taken to recover the amount. The S.T.C's office thinks that as the mills did not refuse to return four bales that were damaged by rain water and as they agreed to open and repack before giving delivery of the bales and also agreed to refund the value of the bales if they were not required, they could not be said to have contravened clause 30 of the Cotton Textiles (Control) Order, 1948. According to the S.T.C's office, a suit will have to be filed for recovery of thecost of 4 /1/ bales paid in advance. The office is requested to see and advise regarding taking legal proceedings.

Mjr/16/8/

4 Cs.

Office of the R.L.A.

The view taken by the Deputy State Textile Control in his note dated the 8th January 1953 is correct. The only remedy is to file a suit for the recovery of the price of 4 bales.

Sd/- P.M...ad

28/1

O.C. Remembrancer of Legal Affairs.

U.R. to S.T...., No. G- 66, dated the 29th January 1953.

Mjr/16/8,

4 Cs.

L.D.R.I.No. 343(5431), dated 4-3-53

Submitted.

The facts in brief are as follows:-

Under release order No. Misc. Cye 10/A/141 703, dt. 12.2.52 addressed to M/s. Kohinoor mills Co., Ltd., 48 bales of soft twisted yarn were released by the Dy. Director (Yarn)in favour of the S.T.C., Bombay to meet the requirements of M/s. Kenyon Greaves Ltd., Bombay. By letter No.604/T-1706/By-V, dt. 14-2-52 the S.T.C., Bombay informed M/s. Kohinoor mills that instructions regarding delivery of the bales to M/s. Kenyan greaves Ltd. would be issued as soon as the latter paid Govt. surcharge of 10% over the ex-mill price. On M/s. K. Greaves paying the surcharge M/s. Kohinoor Mills Co. Ltd. were asked under letters No.s.604/P 614/MAACs/IV to deliver M/ 36 & 86 cases to them. By letter dt 15-4-52 M/s. Kenyon Greaves Ltd. ~~xxxxxxx~~ objected to the payment of 10% surcharge and demanded refund of the same. They contended that as a result of the said surcharge the price of ropes manufactured in Bombay would be more than imported ropes hence they would have to close down their factory.

The question for M.L.A's consideration is whether the S.T.C. is legally justified in recovering the surcharge at the rate of 10% over the ex-mill price of yarn released to M/s. K. Greaves & Co. Ltd.m by the T.C. through the S.T.C.

Mjr/16/8/

4 Cs.

Office of the R.L.A.

The levy of 10 precent surcharge in respect of bales released in favour of Messrs. Kenyon Greaves and Company Ltd., Bombay, for the purpose of ropes and bandage does not appear to have any legal authority. The notification No. 24(3)/VII dated the 6th March 1950, which appears to have been relied upon by theState Textile Controller's Office, has no application and does not authorise the levy of 10 present surcharge b Government. By that Notification the maximum and minimum prices of yarn have been fixed and if at all 10 percent above the ex-factory price is leviable on sale of forty bales to Messrs. Kenyon Greaves and Company, Ltd., Bombay, that 10 percent would go to the seller and not to Covernment. It is admitted that the release of forty bales in favour of Messrs. Kenyon Greaves and Company Ltd., Bombay was a direct release on Kohinoor Mills and the quota was not debitable to the State quota. If it were debitable to the State quota possibly it could have been argued that the release would be deemed to be from Government's quota i.e. to say sale of yarn by Government to Kenyon Greaves and Company Ltd., Bombay, in which case the surcharge of 10 percent would be considered as part of the price quoted by Government and paid by Messrs. Kenyon Greaves and Company Ltd., Bombay. But that argument would not be available in view of the fact that the release of forty bales in favour of Messrs. Kenyon Greaves and Company Ltd., Bombay was not debitable to the State quota. In these circumstances it appears that the levy of 10 percent surcharge, though supportable on the ground of equal treatment, has no legal backing and as such appears to be unauthorised (see Art. 265 of the Constitution).

Sd/- J.V.Phurandhar
13/5
Remembrancer of Legal Affairs.

O.O. D.M.to S.T.C., ... G-264, dated the 14th May 1953.
Mjr/16/8/
4 Cs.

Submitted.

2. Please see the note of the S.T.C's office on pages 159-161 ante.

3. The facts of this case, in short, are as follows:-

On receipt of a crash message from Bombay Police on 2-5-51 that mill made cloth had been sent to Kanpur from Bombay as powerloom cloth, the Kanpur police detained88 bales sent by Shri Kanaylal Ramsaran to M/s. Lalloomal Gayaprasad and 75 bales sent by M/s. Bansidhar Gopaldas to self. The committee of Textile Experts certified all the bales except 55 bales to be of powerloom cloth. Therefore they were returned to the parties. The remaining 55 bales were certified by the committee to be doubtful. However, out of these 55 bales only 33 bales could be linked up with the original mill made cloth. It was found that these 33 bales were processed in the Raj Deying and Brinting Works by one Shri Mansukhalal Nathalal Shah of M/s. Saurashtra Trading Company. As per orders of Government, a prosecution was launched against Shri Manuskhlal Nathalal and three others in the court of the Presidency Magistrate, 25th Court, Mazagaon, Bombay for contravention of clause 23(1)(d), (e) and (f) of the Cotton Textiles (Control) Order, 1948. Charge was framed by the learned Magistrate against the accused only under clause 23(1)(f) which prohibits possession of cloth with defaced or altered marking. Shri Mansukhalal pleaded guilty to the charge. The counsel for the defence pleaded in the court that a severe punishment may not be inflicted on the accused as the controls had been lifted and as the 33 bales if forfeited would fetch about Rs. 35,000/- to Government. The learned Magistrate accepted the plea of the counsel for the defe ce. He sentenced Shri Mansukhalal to undergo one day's simple imprisonment and to pay a fine of Rs. 1,000/- in default to undergo 2 months' rigorous imprisonment. 33 bales were ordered by him

to be forfeited to G

to be forfeited to Government. All the other accused were acquitted. The S.T.C's office feels that it is very difficult to detect such offences. Therefore according to that office, the punishment is not commensurate with the gravity of the offence. The Legal Department is requested to advise whether the case is fit for being taken to the High Court in revision.

Mjr/16/8/
4 Cs.

Legal Department.

The accused has lost cloth worth Rs. 35,000/- by forfeiture. His business was new. The controls have now been lifted. The offence proved is merely of possession of cloth containing altered or defaced markings. It was not proved that the accused defacted or altered the markings. In the circumstances the sentence of fine of Rs. 1,000/- does not appear grossly inadequate and I do no h Court. will interfere.

Sd/-

o.o.

Additional Secretary to Government.

J.R. to S.T.C., No G-619, dated the 8th October 1953.

Kjr/16/8/

Cs.

Legal Department.

Shri Mohammed Haneef Hajee Attaullah of Bhivandi a member of the Bhivandi Saree Manufactures' Association applied to the Textile Commissioner through the District Magistrate, Thana on the 1st August 1951 for premission to acquire and instal 2 power looms for the manufacture of art silk fabrics. This application, it seems, was not recommended by the State Textile Controller as the party had installed the looms without obtaining the prior permission of the Textile Commissioner and the application was therefore forwarded to the Textile Commissioner for such action as he deemed fit take against the applicant. The Textile Commissioner it seems then called for the explanation of the applicant and forwarded it to the State Textile Controller for his comments. The State Textile Controller called for the District Magistrate, Thana's report thereon. The District Magistrate, Thana reported that when the Yarn Inspector visited the premises of the applicant on the 17th November 1952 at 9 a.m. he found both the looms fixed up but they were not working at that time and it was therefore, difficult to say whether the looms were actually idle for all the days even since their erection. The State Textile Controller thereupon put up the papers for the orders of Government and the Minister (Civil Supplies) directed that the party should be prosecuted. The Textile Commissioner was, therefore, informed of Government orders and the District Magistrate, Thana, was asked to institute legal proceedings immediately. This was on the 22nd December 1952. On 31st March 1953 the State Textile Controller received a copy for information from the Textile Commissioner of the special permit given by him to Shri Mohammed Haneef Haji Attaullah giving him permission to acquire and instal twopower looms provided that those power looms were not worked on cotton yarn. When the copy was received a prosecution against the party was already launched. The Textile Commissioner was, therefore, requested to state whether the breaches committed by the party under clause 12(3) of the Cotton Textile (Contro Order, 1948 have been condoned. The Deputy Director in the

office of the Textile Commissioner informed the State Textil Controller on the 29th April 1953 that in consideration of t circumstances under which the party obtained the looms in question and also as it was proposed to work the looms only on non-cotton yarn, it was decided to condone the offence an that a special permit has been issued to the party to regula se the position. The papers were submitted to the Minister (Civil Supplies) and Chief Minister and under the instructio of the Minister (Civil Supplies), the State Textile Controll discussed the case with the Joint Textile Commissioner and the Legal Assistant to the Textile Commissioner. The Textile Commissioner's office has pointed out that the Cotton Textil (Control) Order, 1948 applies only to cotton cloth and that clause 12(3) of that order is applicable only to those who acquire and instal looms without the Textile Commissioner's permission for working with cotton yarn and whenever the looms were acquired and installed for manufacturing silk and art silk it was the Textile Commissioner's policy to condon technical breach.

In this case, the prosecution is actually pending in the Court of the Additional Resident Magistrate, First Clas Bhiwandi and in view of the circumstances of the case stated above, the State Textile Controller's office has proposed its withdrawal and before the papers are submitted to the Chief Minister for his orders in the matter, they ar shown to the Secretary, Legal Department.

The offence in this case is a technical one and the proposal of the Civil Supplies Department to withdraw the prosecution is therefore supported.

Sd/- P.M.Lad
16/12
O.C. Secretary to Government.

M (Civil Supplies) I agree in view of 'A' above
Sd. Y.B.C.
1812
Chief Minister

Sd- M.R.D.
21/12

J.R. to C.S.D. No. G-790 dt. 23-12-53,

Mjr/16/8/